

EX PARTE OR LATE FILED

April 18, 2012

REDACTED – FOR PUBLIC INSPECTION

VIA HAND DELIVERYMarlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

FILED/ACCEPTED

APR 18 2012

Federal Communications Commission
Office of the SecretaryMs. Lynne Hewitt Engledow
Pricing Policy Division, Wireline Competition Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: *Ex Parte Presentation and Request for Confidential Treatment, In the Matter of Developing a Unified Intercarrier Compensation Regime, et al., CC Docket No. 01-92; WC Docket Nos. 05-337, 07-135, and 10-90; and GN Docket No. 09-51*

Dear Ms. Dortch and Ms. Hewitt Engledow:

On April 17, 2012, John Badal of Sacred Wind Communications, Inc. ("Sacred Wind") and myself, counsel to Sacred Wind, along with Francis X. Gallagher, managing partner of Charlesmead Advisors, LLC, met with Angela Kronenberg, Wireline Legal Advisor to Commission Mignon Clyburn, to discuss the impacts on Sacred Wind of the Commission's *USF/ICC Reform Order*.¹ At the meeting, Sacred Wind provided a copy of the attached presentation, which contains commercially and proprietary sensitive information, and as discussed more fully below, requests confidential treatment of this presentation in accordance with the Commission's *Protective Order* in the captioned proceeding,² and the Freedom of Information Act.

At the meeting, the Sacred Wind representatives noted the unique circumstances of Tribal-focused carriers, such as Sacred Wind, and the fundamental flaws in the *USF/ICC Reform Order*'s regression analysis as applied to Sacred Wind and similar Tribal-focused carriers.

¹ *In the Matter of Connect America Fund, et al.*, WC Docket Nos. 10-90, 01-135, 05-337, and 03-109; CC Docket Nos. 01-92 and 96-45; GN Docket No. 09-51; and WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161 (2011) ("*USF/ICC Reform Order*").

² *In the Matter of Developing a Unified Intercarrier Compensation Regime, et al.*, CC Docket No. 01-92; WC Docket Nos. 05-337, 07-135, and 10-90; and GN Docket No. 09-51, Protective Order, 25 FCC Rcd. 13160 (2010) ("*Protective Order*").

Sacred Wind observed that, among other things, the regression approach fails to take into account the unique challenges facing carriers that serve Tribal areas, and will lead to gross and unsustainable reductions in critical USF high-cost support. This will irretrievably damage investment in facilities, the ability to operate and provide voice and broadband services, and irreparably harm Tribal customers in the process. We also noted that, ironically, this would come just at a time when a number of new carriers serving primarily Tribal lands and customers, such as Sacred Wind, have made significant investments in new facilities and operations, with the real promise of making voice and broadband services universally available to these Tribal customers, consistent with the explicit goals of Congress and the Commission.

During the meeting, Sacred Wind provided a copy of the attached presentation, discussing these points in more detail, which includes estimates of the annual reduction in Sacred Wind's high-cost loop support ("HCLS") and interstate common line support ("ICLS") under the regression model set forth in the *USF/ICC Reform Order* as well as confidential information regarding Sacred Wind's operational costs, maintenance expenses, payroll expenditures, and Rural Utilities Service ("RUS") loan obligations. Such information represents commercially and proprietary sensitive information, the public disclosure of which would cause substantial harm to Sacred Wind. As a result, Sacred Wind has redacted such information as confidential in accordance with the provisions of the *Protective Order*. Pursuant to the *Protective Order*, Sacred Wind has clearly bracketed the portions of the presentation that contain confidential information in its un-redacted copies and submitted two redacted copies of its presentation for public inspection.

In addition to protection from disclosure pursuant to the *Protective Order*, Sacred Wind also seeks protection under Exemption 4 of the Freedom of Information Act ("FOIA") and the Commission's rules.³ Under the Commission's FOIA rules, "[t]rade secrets and commercial or financial information . . . not routinely available for public inspection" may receive protection from disclosure.⁴ In accordance with the Commission's rules,⁵ Sacred Wind provides the following additional information to support its request to protect the confidential information contained in the presentation from disclosure under Exemption 4 of FOIA:

1. All of the information bracketed in the unredacted presentation and redacted in the public presentation represents confidential commercial and proprietary information of Sacred Wind under Exemption 4 of FOIA. Consequently, Sacred Wind requests that the redacted information not be made available for public inspection except in accordance with the Commission's FOIA rules or as permitted under the *Protective Order*.⁶ This confidential information includes Sacred Wind's actual and projected operational costs, maintenance expenses, payroll expenditures, and RUS loan obligations.

³ 5 U.S.C. § 552(b)(4); 47 C.F.R. § 0.457(d).

⁴ 47 C.F.R. § 0.457(d).

⁵ 47 C.F.R. § 0.459(b).

⁶ See 47 C.F.R. § 0.461.

2. The commercially and proprietary sensitive information contained in the presentation was provided to the Commission voluntarily in order to aid the Commission in developing a complete and accurate record in the above-referenced proceeding.

3. The confidential information contained in the presentation contains estimates of Sacred Wind's current and projected operational costs, maintenance expenses, payroll expenditures, and RUS loan obligations. The confidential information contained in the presentation relates directly to Sacred Wind's provision of broadband and voice services. As the Commission is aware, the market for these services is highly competitive and the disclosure of the confidential information could subject Sacred Wind to potential competitive harms and potential economic losses. Due to the detrimental effects posed by the release of Sacred Wind's confidential information, the Commission should protect such information from public disclosure.

5. The Commission must protect the confidentiality of commercial information submitted to it voluntarily when such information is not normally disclosed to the public.⁷ Here, the commercially sensitive and proprietary information contained in the presentation is not provided to the public or to persons outside of Sacred Wind or its advisors, except as may be required with customary confidentiality protections. If disclosed publicly, Sacred Wind's competitors would gain access to information regarding Sacred Wind's current and future costs. Competitors could potentially use such confidential information to undermine Sacred Wind's market position and service offerings. Sacred Wind requests that the commercially and proprietary sensitive information contained in the presentation be kept confidential indefinitely. Sacred Wind does not foresee a time when it would be appropriate under the Commission's rules to disclose the information contained therein.⁸

⁷ See, e.g., *Critical Mass Energy Project v. NRC*, 975 F.2d 871 (D.C. Cir. 1992).

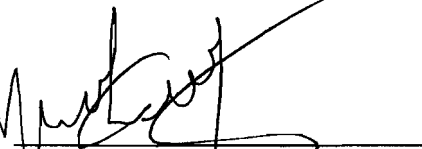
⁸ See 47 C.F.R. § 0.461.

Ms. Marlene H. Dortch
Ms. Lynne Hewitt Engledow
April 17, 2012
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Thank you for your attention to this matter. If you have any questions regarding this *ex parte* presentation and request for confidential treatment, please do not hesitate to contact the undersigned.

Respectfully Submitted,

SACRED WIND COMMUNICATIONS, INC.

By: 

Martin L. Stern
K&L Gates LLP
1601 K Street, NW
Washington, D.C. 20006
(202) 778-9000 (Tel)
(202) 778-9001 (Fax)

Attachment

cc: Angela Kronenberg

FCC Presentation Sacred Wind Communications at Risk

Washington, DC

April 2012

Federal Universal Service Mission

- Equal availability & quality of service to rural areas as urban
- Affordability of service in rural areas
 - 1949 - Telecom added to REA
 - *1997 – FCC created USF*
 - *2000 – FCC's Tribal Order w/ special focus on:*
 - *the least served, poorest, most remote*

Special Tribal Focus

Federal/Telco partnerships

- Cheyenne River Sioux
- Gila River
- Ft. Mojave
- Tohono O'odham
- San Carlos Apache
- Saddleback (Salt River Pima-Maricopa)
- Mescalero Apache
- Sacred Wind
- Hopi

RLECs that fail all market tests

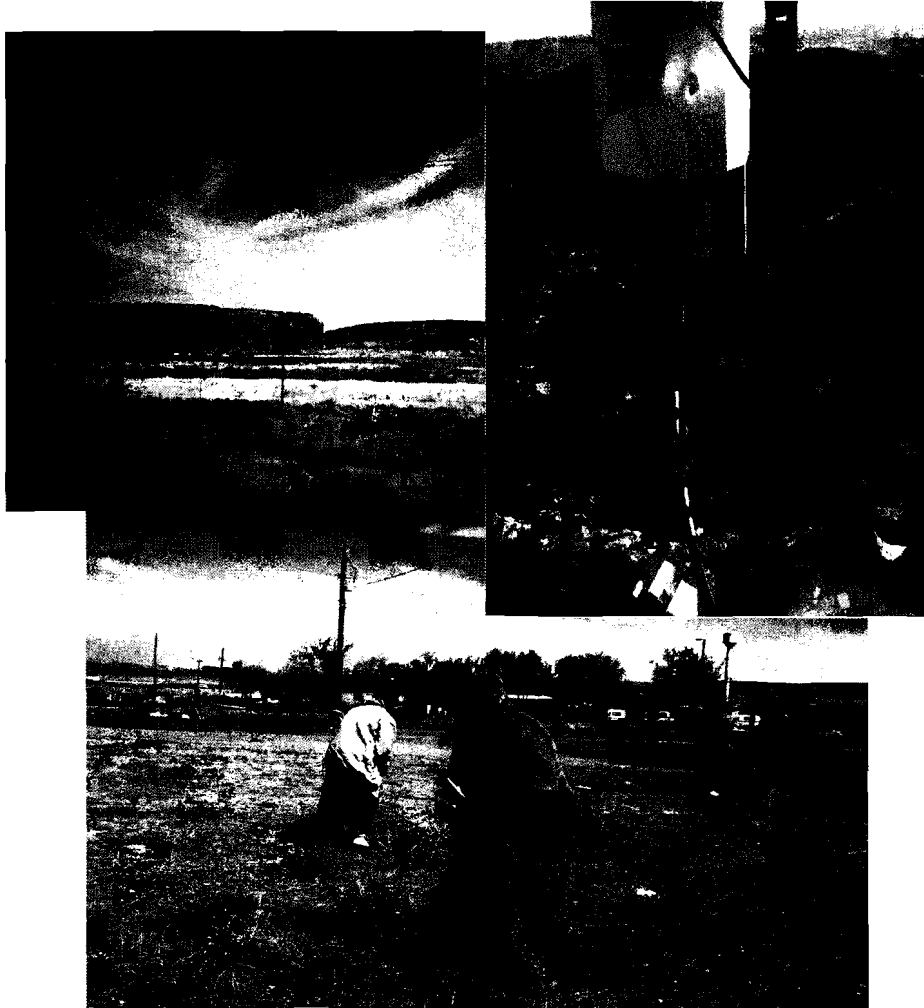
- High initial debt due to needed infrastructure
- Low density population
- Low income population
- Challenging terrain
- Federal land permitting
- Negligible exterior market opportunities
- Highest operating costs

Sacred Wind Communications stepped up to FCC's challenge



- Achievements:
 - Built new infrastructure
 - Hired/trained tribal talent
 - Gaining customers every month – mass expansion now
 - Increased tribal lifeline subscribers from 26 – 1,650
 - Increased broadband *coverage* from 0% - 99%
 - Broadband *usage* from 1% - 30%
 - Voted “Most Inspiring Small Business in America, 2009”

Sacred Wind does not fit the FCC's quantile regression analysis



- Circumstances

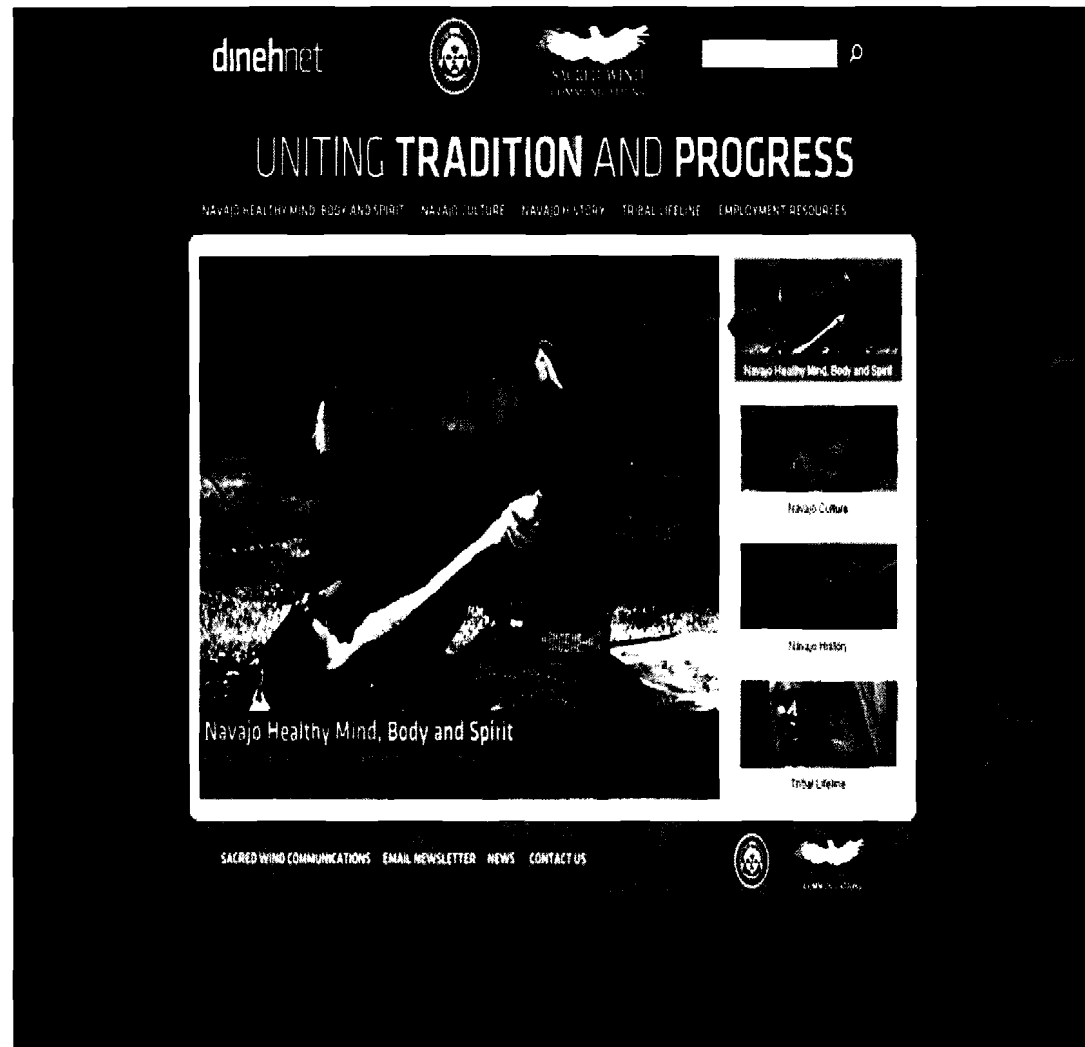
- In expansion mode
- High per subscriber debt
- 3,600 square miles
- 2 Homes/ square mile
- Low income base
 - Long history of neglect, apathy, racism
- Mtns, buttes, canyons, sacred lands, lava rock
- 2-4 year federal ROW process
- Low unregulated market potential
- High operating expenses

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Sacred Wind's Dinehnet

Culturally oriented broadband

- Online Navajo language training
 - Exclusive by Rosetta Stone
- Navajo history
 - Code Talkers video clip
 - Longest Walk video project
- Navajo clan information
- Navajo traditional medicines
- Medical information & newsletter
- Government services information & links

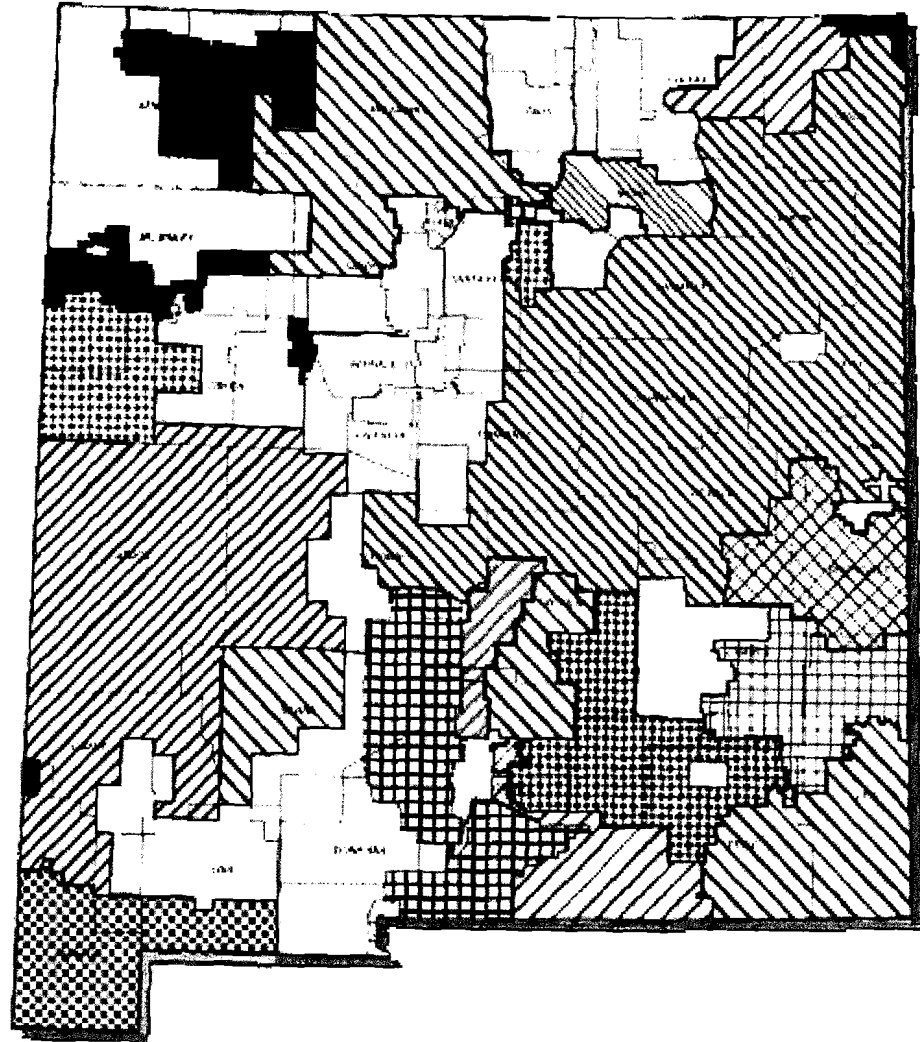


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Consolidation Opportunities for Tribal Study Areas?

Sacred Wind Study area surrounded by:

- CenturyLink
- Frontier
- Windstream
- Tribal service territories long known for:
 - low infrastructural investment
 - Low voice penetration
 - Low broadband access
 - Inadequate mobile service
 - Low return on investment



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CAF Order Est. Reductions

Impact on Sacred Wind

\$2,713,813
annually HCLS &
ICLS only

32 % of current
support

	2011	2012 proj'd	% ttl OPEX
Total OpEx	\$ [REDACTED]	\$ [REDACTED]	[REDACTED] %
Payroll/ benefits	\$ [REDACTED]	\$ [REDACTED]	[REDACTED] %
RUS loan pmts	\$ [REDACTED]	\$ [REDACTED]	[REDACTED] %
Maint./ upgrades	\$ [REDACTED]	\$ [REDACTED]	[REDACTED] %

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